

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

JOSHUA CHATWIN,)
Plaintiff,) Deposition of:
vs.)) WALTER REICHERT, M.D.
DRAPER CITY; OFFICER J.)) Civil No.
PATTERSON, in his)) 2:14-cv-00375
individual and official)) Judge Dale A. Kimball
capacity; OFFICER DAVID)
HARRIS, in his individual)
and official capacity;)
OFFICER HEATHER BAUGH, in)
her individual and official)
capacity; and JOHN DOES)
-10,)
Defendants.)

June 24, 2016 * 3:47 p.m.

Location: Western Neurological Center, P.C.
1187 East 3900 South
Salt Lake City, Utah 84124

Reporter: Lisa Bernardo, CSR, RPR

Walter Reichert, M.D. * June 24, 2016

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1 Q. -- is that correct?

2 A. That is correct.

3 Q. And so you're not some forensic expert
4 that's looking at injuries and trying to determine
5 what caused those injuries, true?

6 A. I cannot -- I am not an expert in that
7 kind of field.

8 Q. And so you cannot testify or provide an
9 expert opinion about what type of action caused an
10 injury, true?

11 A. I really can't. I am just on, look, I --
12 I'll hit the rewind button for one second. I see the
13 patient. It's been a couple of years now because his
14 accident, if I remember, it was like 2012. '14.
15 Excuse me. Oh, '10. Oh, my God. Okay. That's a
16 long time ago. Excuse me. And I was not there. I
17 am not an expert in the physics of bodies twisting
18 and turning. I know what he suffered, but exactly
19 what kind of force it may have taken to have him
20 suffer those injuries and what exact position he was
21 in and these kind of details, I can only rely on the
22 evidence from what I have here. Does that answer
23 your question?

24 Q. It does, but I want to make sure the
25 record is clear. So when you state, "It is my

1 A. Yes.

2 Q. The injury he suffered?

3 A. The injury he suffered.

4 Q. Going to (b), "Left cranial nerve VIII
5 damage producing left sensorineural hearing loss, and
6 subjective decreased hearing and tinnitus. This
7 opinion is based on his audiometric examination
8 showing decreased high frequency hearing on the left,
9 his symptoms and his physical examination."

10 A. (Nodding head in the affirmative.)

11 Q. So, sir, let's get back to your
12 qualification. You're a neurologist, correct?

13 A. I'm a neurologist, yes.

14 Q. You are not an ear, nose, throat doctor --

15 A. I am not.

16 Q. -- for the layperson's term?

17 You're not an audio?

18 A. I'm not an audiologist.

19 Q. You're not an audiologist, you're a
20 neurologist, correct?

21 A. I am.

22 Q. When was the last time you studied
23 audiology?

24 A. As part of my neurological training and
25 every day practice of neurology, we examine every

1 patient for their cranial nerves. One of those
2 cranial nerves is cranial nerve VIII. So although I
3 have not undertaken a degree in audiology and don't
4 perform hearing tests, part of a complete
5 neurological examination is an examination of all of
6 our patient's cranial nerves. Cranial nerve VIII is
7 one of those cranial nerves. And when I examined
8 Mr. Chatwin, he had decreased hearing on the left.
9 We knew he had a skull fracture on the left, and the
10 cranial nerve VIII is a nerve that is susceptible to
11 injury in a skull fracture.

12 So in answer to your question, I didn't
13 study audiology, but I studied neurology, which
14 involves the cranial nerves.

15 Q. You have reviewed Mr. Goldman's, or
16 Dr. Goldman's report, correct?

17 A. I did.

18 Q. And you actually did a rebuttal to his
19 rebuttal, right?

20 A. I did.

21 Q. Okay. In his report do you recall him
22 saying that he would rely upon his
23 otorhinolaryngology -- and I apologize, I just
24 slaughtered that -- otorhinolaryngology colleagues
25 for a definite answer with respect to his tinnitus,

1 A. How can I answer that question?

2 Q. Let me move on to a different question.

3 When was the last time you diagnosed someone with
4 tinnitus?

5 A. I don't diagnose people with tinnitus.

6 They say, I've got a ringing in my ear. I say,
7 you've got tinnitus.

8 Q. Would you agree with me that there are
9 specialists that can diagnose a person with tinnitus?

10 A. They can't diagnose it anymore than I can
11 than I just did with you. If they said -- if you
12 came in and said, I've got ringing in my ear, and
13 they said, you don't have ringing in your ear, then
14 you would say, Doctor, either I'm a liar or you
15 aren't telling me the truth.

16 Q. So when you say that he had tinnitus,
17 you're basing that off of his self-report, correct?

18 A. That is the only way it gets reported,
19 that is tinnitus. There is no testing that can be
20 done that -- that is -- if somebody comes in -- okay,
21 we're getting off topic, but let's go ahead. If
22 somebody comes in and says, I've got a headache, and
23 the doctor says, no, you don't, you would say this
24 doctor is out of his gore. He's a liar. If you come
25 in and say, I've got ringing in my ear, and the

1 workup, would you?

2 A. No.

3 Q. Because that's not something you do?

4 A. No.

5 Q. Going back to your opinion number 1, I
6 apologize to do that, but I want to clarify one
7 thing. You would agree with me that neurologists
8 don't commonly get into the causation? You said
9 that's something we as lawyers like to talk about,
10 but you would agree with me that neurologists don't
11 commonly give opinions about the causes of head
12 injuries, correct?

13 A. Let me qualify that. Okay. If someone is
14 in a car and smashes into a brick wall and they have
15 a head scenario, I would say smashing into that brick
16 wall caused their head injury.

17 Q. Sure. But you wouldn't get into
18 testifying about what amount of force?

19 A. I can't do that, no. No, I cannot do
20 that.

21 Q. And you didn't do that in this case? You
22 didn't go through any type of methodology to
23 determine whether he was thrown to the ground,
24 correct?

25 A. I did not.

Walter Reichert, M.D. * June 24, 2016

51

1 Googled. I'm sorry. I don't remember that.

2 Q. Those other two, PubMed --

3 A. PubMed is probably peer-reviewed. At
4 least it publishes medical articles. You know what I
5 mean?

6 Q. And is that a subscription?

7 A. No, that's not.

8 Q. Is that just a -- you can Google PubMed --

9 A. I may have looked at Mayo Clinic
10 Proceedings. What else did I look? I don't remember
11 where. I'm sorry. I really don't remember. This
12 was done in January.

13 Q. You don't recall exactly what your
14 methodology was with respect to formulating this
15 opinion --

16 A. No.

17 Q. -- except for that you --

18 A. I just went online and plowed through it.

19 Q. Is this another one of those opinions that
20 at trial you would be leery of giving?

21 A. Okay. The answer is probably yes, because
22 it should be probably given by somebody who sees
23 alcoholics all of the time. Look, when I see people
24 intoxicated in the hospital, that's a one-off kind of
25 thing. Do you know what I mean?

1 Like this guy, if I would have seen him in
2 the hospital, that's why I had to Google this, is
3 because this was so high that I almost couldn't
4 believe it. You know what I mean? This guy was even
5 up and walking around. I looked at it twice to make
6 sure that I had it right. And that's why I had to
7 Google it, because it was so high.

8 Q. And so do you intend to offer this type of
9 an opinion during trial?

10 A. The opinions that I would offer at trial
11 is that it was so high, I had to Google it to get my
12 feet on the ground.

13 Q. Do you feel like you don't have the
14 qualifications to testify about something like this?

15 A. I would testify that I do not treat
16 alcoholics or detox alcoholics and exact correlation
17 between alcohol levels and behavior should be
18 determined by people who do that all of the time.

19 Q. Sir, I want to now kind of just talk a
20 little bit about what information you were provided.
21 Were you provided with a copy of Mr. Chatwin's
22 deposition transcript?

23 A. Uh-uh (negative). Deposition transcript?

24 Q. Where he testified under oath.

25 A. No.

1 in his ear."

2 Question: "So could you put that
3 in layperson's terms?"

4 THE WITNESS: The two kind of go together,
5 because oftentimes when the nerve is injured, then
6 people have, in addition to having a hearing loss,
7 they also have ringing in their ears.

8 Q. (By Ms. Marcy) Do you ever see patients,
9 let's say, younger than 40 that have the arthritis in
10 their ear that causes tinnitus?

11 A. Yes. It can happen at any age.

12 Oftentimes, if somebody has the otosclerosis, which
13 is the arthritis there, they may also have other --
14 they may have a rheumatological condition that can
15 cause it, like rheumatoid arthritis, things like
16 that, that can produce that kind of thing. But in
17 general, it's a condition that happens to older
18 patients.

19 Q. Did Josh Chatwin have any signs of this
20 type of arthritis?

21 A. No. Because, really, I'm thinking more
22 that his tinnitus and hearing loss were due to injury
23 of the nerve itself from the skull fracture.

24 Q. I was a little unclear on the boards
25 certified stuff. You said you were board certified

1 in psychiatry, but you don't practice psychiatry.

2 A. Now. The board certification, the name of
3 the board is The American Board of Psychiatry and
4 Neurology. Now, I did a neurology residency. As
5 part of that residency, we rotate through psychiatry
6 to get training in psychiatry. But the emphasis of
7 my boards is neurology. But I did actually take a
8 part of my both written examination and my oral
9 examination in neurology included a psychiatry
10 component.

11 Q. Okay. When you were a resident, did you
12 prescribe, what would you call it?

13 A. Psychiatric medication.

14 Q. Psychiatric medication?

15 A. Yes. When I was rotating through
16 psychiatry, I prescribed actually medication for
17 things like schizophrenia, and, you know, excessive
18 compulsive disorder, anxiety, and all that kind of
19 stuff. But I don't do that anymore. That was when I
20 was a resident rotating through that service.

21 Q. How did you know what medications to give
22 to which person with the mental illness?

23 A. Well, because I was in training then and
24 we had attendings that were supervising us.

25 Q. I watch Grey's Anatomy.